LINDA LINGLE

AARON S. FUJIOKA ADMINISTRATOR



PROCUREMENT POLICY BOARD
PHYLLIS M. KOIKE
GREGORY L. KING
PUISS K. SAITO

MYRON L TONG

STATE OF HAWAII STATE PROCUREMENT OFFICE

P.O. Box 119 Honolulu, Hawaii 96810-0119 Tel: (808) 587-4700 Fax: (808) 587-4703 www.spo.hawaii.gov

June 16, 2003

PROCUREMENT DIRECTIVE NO. 2003-01

TO:

All Chief Procurement Officers

All Executive Department Heads

FROM:

Aaron S. Fujioka, Administrator

State Procurement Office

SUBJECT:

Implementation of Act 52, SLH 2003 (SB 1262, CD1)

The purpose of this circular is to summarize the requirements of Act 52 and issue guidelines for its implementation.

Summary of Act 52, SLH 2003:

Section 2. Adds a new section to Chapter 103D on <u>Pre-bid conference</u>
Requires a pre-bid conference for construction or design-build projects under §103D-302 totaling \$500,000 or more; and under §103D-303 totaling \$100,000 or more.

Section 3. Amends §103D-206, <u>Additional duties of the administrator of the procurement office</u>.

Adds to the responsibility of the Administrator to establish and maintain a procurement institute in cooperation with the William S. Richardson School of Law, to promote and develop procurement education and training.

Section 4. Amends §103D-303, <u>Competitive sealed proposals</u> Includes a request for debriefing process for non-selected offerors.

Section 5. Amends §103D-304, Procurement of professional services

Amends the name of the "screening" committee to the "selection" committee; the requirement for members of the review and selection committees shall consist of a minimum of "three employees from the agency or from another governmental body" is amended to "three persons"; provides that the selection criteria employed by the selection committee shall be in descending order of importance; provides that the selection committee shall determine in writing any additional criteria used in the evaluation process;

provides that the ranking of offerors shall be determined by the selection committee rather than by the head of the purchasing agency; the requirement for all professional service contracts to be posted electronically was amended to require only contracts \$5,000 or more; includes a request for debriefing process for non-selected offerors; and provides that design professional services furnished by licensees under chapter 464, HRS, shall only be procured pursuant to \$103D-304 (excluding the small purchase process) or \$103D-307, HRS.

Note: Design professional services can no longer be procured as a small purchase under §103D-305, HRS. The §103D-304 (f), (g), (h), HRS, selection committee process shall be used. §103D-307, HRS, shall be used for emergency design professional services \$25,000 or more.

Section 6. Amends §103D-310, Responsibility of offerors

Adds provisions for all offerors, upon award of a contract, to comply with Chapters 237 (general excise tax); 383 (employment security); 386 (workers compensation); 392 (temporary disability insurance); and 393 (pre-paid health care); and shall be incorporated or organized under the laws of the State, or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Section 7. Amends §103D-701, <u>Authority to resolve protested solicitations and awards</u> Includes the provision for a request for debriefing.

Section 8. Repeals §103D-1007, Preference to bidders on state agency contracts

Implementation of Act 52 (July 1, 2003):

The Procurement Policy Board is in the process of adopting Interim Hawaii Administrative Rules to implement the requirements of Act 52. However, the rules will not be ready for distribution until after July 1, 2003.

In order for all purchasing agencies to be in compliance with the July 1, 2003 effective date of Act 52, the following guidelines are provided:

- Procurements pursuant to §§103D-302 and 103D-303, HRS, solicited (legal advertised date) before July 1, 2003, are exempt from Act 52 requirements.
- Procurements for professional services pursuant to §103D-304, HRS, solicited (legal advertised date), and if persons are determined to be most qualified by a committee before July 1, 2003, are exempt from Act 52 requirements even though the award is subsequent to July 1, 2003. However, if the selection committee evaluates persons on or after the July 1, 2003 effective date of this Act, then the requirements of Act 52 shall apply.
- All §103D-304, HRS, professional service awards for \$5,000 or more are to be posted electronically within seven days of the award. This is a change. All §103D-304, HRS, awards previously required posting.

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Should there be any questions, please call me at (808) 587-4700 or your staff may contact:

Justin Fo (586-0577), justin.fo@hawaii.gov; Ruth Yamaguchi (585-0567), ruth.yamaguchi@hawaii.gov; or Bob Governs (586-0554), robert.governs@hawaii.gov.

Attach. Act 52, SLH 2003 (SB1262, CD1)

Honolulu, Hawaii

Spil Z

, 2003

RE:

S.B. No. 1262

S.D. 1

H.D. 1

C.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Second State Legislature
Regular Session of 2003
State of Hawaii

Honorable Calvin K.Y. Say Speaker, House of Representatives Twenty-Second State Legislature Regular Session of 2003 State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1262, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend various provisions of the state procurement code.

Your Committee on Conference met numerous times to discuss the differences between the House and Senate versions of this measure before reaching agreement. Your Committee on Conference used the S.D. 1 version of this measure as a base to prepare the C.D. 1 version, incorporating the amendments discussed below.

Your Committee on Conference amended the pre-bid conference provisions of this measure to require a pre-bid conference for all construction or design-build projects with a total estimated

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contract value of \$500,000 or more that are awarded pursuant to competitive sealed bidding, and for all such projects with an estimated value of \$100,000 or more awarded through a request for proposals. Your Committee on Conference also amended the language to clarify that only one pre-bid conference is required.

In addition, your Committee on Conference inserted a provision to require the head of the purchasing agency to invite all potential interested subcontractors and union representatives to attend the pre-bid conference.

Your Committee on Conference also included language from the H.D. 1 version of this measure to authorize nonselected offerors and nonselected professional service providers to request a "debriefing" prior to filing an official protest. Rather than include the language in section 103D-701, Hawaii Revised Statutes (HRS), your Committee on Conference inserted the language directly into sections 103D-303 and 103D-304, HRS. Your Committee on Conference also amended section 103D-701, HRS, to make the protest timeframe consistent.

Your Committee on Conference retained the language from the S.D. 1 version regarding procurement of professional service providers, but added language to give the purchasing agency greater flexibility when awarding professional service contracts for less than \$25,000, and to require the head of the purchasing agency to document the reason if a contract is not successfully negotiated with the first or second ranked person on the list. Your Conference Committee also included language to require electronic posting of every professional service contract awarded for more than \$5,000, rather than \$25,000.

Your Committee on Conference amended the "offeror responsibility" provisions to address constitutionality concerns. As amended, offerors still must demonstrate compliance with Hawaii employment laws, but only once they are awarded a contract. In addition, offerors must be incorporated or organized under the laws of the State of Hawaii or must register a separate branch or division in the State that is capable of fully performing under the contract.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1262, S.D. 1, H.D. 1, as amended herein, and recommends

Hawaii State Legislature

Record of Votes of a Conference Committee

Bill/Concurrent Resolution No.: SB 1262, SD1, HD1				Date/Time: 04/25/03 1.	30	Pr	η		
The recommendation of the House and Senate managers is to pass with amendments (CD).									
The Committee is reconsider	The Committee is reconsidering its previous decision.								
The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure.				The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.					
Senate Managers	Α	WR	N	E	House Managers	A	WR	N	E
KAWAMOTO, Cal (Chair)	V				HIRAKI, Kenneth T. (Co-Chr)	/			
ADUJA, Melodie Williams					MAGAOAY, Michael Y. (Co-Chr)	1			
ESPERO, Willie C.	V				HERKES, Robert N.	V		<u> </u>	
SAKAMOTO. Norman				V	MEYER Colleen R.				1
WHALEN, Paul				/					
7									
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TOTAL	3			v	TOTAL	3			ì
A = Aye	WR = Ay	e with	Reserva	tions	N = Nay	E = Ex	cused		
Senate Recommendation is:	*				House Recommendation is:				
Adopted	1	Not Ac	lopted		Adopted	No	t Adop	ted	
te Lead Chair's or Designee'	s Signati	иге:			House Lead Chair's or Designee's S	ignat	шге:		
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Jistribution: Original -Lead Cha	ir of Orig	inating	g Hous	è	Blue - Drafting Agency				
Pink - Senate Clerk					Yellow - House Clerk's Office				

that it pass Final Reading in the form attached hereto as S.B. No. 1262, S.D. 1, H.D. 1, C.D. 1.

Respectfully submitted on behalf of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

KENNETH T. HIRAKI, Co-Chair

CAL KAWAMOTO, Chair

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A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. The purpose of this Act is to establish 2 procurement policies and procedures that:
- 3 (1) Ensure in-state contractors' ability to win awards of 4 public funds for state contracts;
 - (2) Promote public confidence in the integrity of the procurement process;
 - (3) Increase openness in the award of competitive sealed proposals and professional services contracts;
 - (4) Enhance procurement education in the Pacific by creating a Hawaii procurement institute;
 - (5) Require a pre-bid conference to be attended by all potential bidders, offerors, subcontractors, and union representatives, that will allow all interested parties to raise their protests prior to bidding, so that any subsequent protests can be resolved quickly and efficiently pursuant to the timeframe established in section 103D-701, Hawaii Revised Statutes; and

- (6) Technically correct chapter 103D, Hawaii Revised
 Statutes.
- 3 SECTION 2. Part X of chapter 103D, Hawaii Revised
- 4 Statutes, is amended by adding a new section to be appropriately
- 5 designated and to read as follows:
- 6 "§103D- Pre-bid conference. (a) At least fifteen days
- 7 prior to submission of bids pursuant to section 103D-302 for a
- 8 construction or design-build project with a total estimated
- 9 contract value of \$500,000 or more, and at least fifteen days
- prior to submission of proposals pursuant to section 103D-303
- 11 for a construction or design-build project with a total
- 12 estimated contract value of \$100,000 or more, the head of the
- 13 purchasing agency shall hold a pre-bid conference and shall
- 14 invite all potential interested bidders, offerors,
- 15 subcontractors, and union representatives to attend.
- (b) The procurement policy board shall adopt rules under
- 17 chapter 91 to effectuate this section."
- 18 SECTION 3. Section 103D-206, Hawaii Revised Statutes, is
- 19 amended to read as follows:
- 20 "[+]103D-206[+] Additional duties of the administrator of
- 21 the procurement office. In addition to the duties referred to in section 103D-205, the administrator shall:

1	(1)	Perform periodic review of the procurement practices
2		of all governmental bodies;
3	(2)	Assist, advise, and guide governmental bodies in
4		matters relating to procurement;
5	(3)	Develop and administer a statewide procurement
6		orientation and training program;
7	(4)	Develop, distribute, and maintain a procurement manual
8		for all state procurement officials; [and]
9	(5)	Develop, distribute, and maintain a procurement guide
10		for vendors wishing to do business with the State and
11		its counties[-]; and
12	(6)	Establish and maintain a Hawaii procurement institute,
13		in cooperation with the University of Hawaii
14		William S. Richardson school of law and other public
15		and private entities and/or persons, to promote and
16		develop a professional acquisition workforce and to
17		improve and enhance the State of Hawaii's contractor
18		industrial base through education and training. The
19		Hawaii procurement institute may:
20		(A) Conduct and participate in procurement education
21		and training for entry level and higher qualified

1		State of Hawaii employees and others, including
2		persons not employed by the State of Hawaii;
3	<u>(B)</u>	Conduct and promote research, conferences, and
4		studies to improve the procurement process, laws,
, 5		policies, methods, regulations, procedures, and
6		forms relating to state and local government
7		procurement;
8	<u>(C)</u>	Report on and make recommendations regarding
9	·	goals, guidelines, innovations, and evaluation of
10		state and local government procurement
11		initiatives; and
12	<u>(D)</u>	Establish and maintain a procurement library
13		within the State of Hawaii."
14	SECTION 4	Section 103D-303, Hawaii Revised Statutes, is
15	amended to read	d as follows:
16	"\$103D-303	Competitive sealed proposals. (a) Competitive
17	sealed proposal	s may be utilized to procure goods, services, or
18	construction de	esignated in rules adopted by the procurement
19	policy board as	goods, services, or construction which are
20	either not prac	ticable or not advantageous to the State to
21	procure by comp	etitive sealed bidding. Competitive sealed

proposals may also be utilized when the head of a purchasing

- 1 agency determines in writing that the use of competitive sealed
- 2 bidding is either not practicable or not advantageous to the
- 3 State.
- 4 (b) Proposals shall be solicited through a request for
- 5 proposals.
- 6 (c) Notice of the request for proposals shall be given in
- 7 the same manner as provided in section 103D-302(c).
- 8 (d) Proposals shall be opened so as to avoid disclosure of
- 9 contents to competing offerors during the process of
- -10 negotiation. A register of proposals shall be prepared in
- 11 accordance with rules adopted by the policy board and shall be
- 12 open for public inspection after contract award.
- 13 (e) The request for proposals shall state the relative
- 14 importance of price and other evaluation factors.
- (f) Discussions may be conducted with responsible offerors
- 16 who submit proposals determined to be reasonably susceptible of
- 17 being selected for award for the purpose of clarification to
- 18 assure full understanding of, and responsiveness to, the
- 19 solicitation requirements. Offerors shall be accorded fair and
- 20 equal treatment with respect to any opportunity for discussion
- 21 and revision of proposals, and revisions may be permitted after
- submissions and prior to award for the purpose of obtaining best

- 1 and final offers. In conducting discussions, there shall be no
- 2 disclosure of any information derived from proposals submitted
- 3 by competing offerors.
- 4 (g) Award shall be made to the responsible offeror whose
- 5 proposal is determined in writing to be the most advantageous
- 6 taking into consideration price and the evaluation factors set
- 7 forth in the request for proposals. No other factors or
- 8 criteria shall be used in the evaluation. The contract file
- 9 shall contain the basis on which the award is made.
- (h) In cases of awards made under this section,
- 11 nonselected offerors may submit a written request for debriefing
- 12 to the chief procurement officer or designee within three
- working days after the posting of the award of the contract.
- 14 Thereafter, the head of the purchasing agency shall provide the
- 15 requester a prompt debriefing in accordance with rules adopted
- 16 by the policy board. Any protest by the requester pursuant to
- 17 section 103D-701 following debriefing shall be filed in writing
- 18 with the chief procurement officer or designee within five
- 19 working days after the date that the debriefing is completed."
- 20 SECTION 5. Section 103D-304, Hawaii Revised Statutes, is
- 21 amended to read as follows:

1	"§103D-304 Procurement of professional services. (a)
2	Professional services shall be procured in accordance with
3	sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or
4	this section[-]; provided that design professional services
5	furnished by licensees under chapter 464 shall be procured
6	pursuant to this section or section 103D-307. Contracts for
7	professional services shall be awarded on the basis of
8	demonstrated competence and qualification for the type of
9	services required, and at fair and reasonable prices.
10	(b) At a minimum, before the beginning of each fiscal
- 11	year, the head of each purchasing agency shall publish a notice
12	inviting persons engaged in providing professional services
13	which the agency anticipates needing in the next fiscal year, to
14	submit current statements of qualifications and expressions of
15	interest to the agency. Additional notices [may] shall be given
16	if:
17	(1) The response to the initial notice is inadequate;
18	(2) The response to the initial notice does not result in
19	adequate representation of available sources; [ex]
20	(3) [Previously unanticipated] <u>New</u> needs for professional

(4) Rules adopted by the policy board so specify.

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services arise[-]; or

- 1 The chief procurement officer may specify a uniform format for
- 2 statements of qualifications. Persons may amend these
- 3 statements by filing a new statement prior to the date
- 4 designated for submission.
- 5 (c) The head of the purchasing agency shall designate a
- 6 review committee consisting of a minimum of three [employees
- 7 from the agency or from another governmental body, persons with
- 8 sufficient education, training, and licenses or credentials for
- 9 each type of professional service which may be required. In
- designating the members of the review committee, the head of the
- 11 purchasing agency shall ensure the impartiality and independence
- of committee members. The names of the members of the review
- 13 committee established under this section shall be placed in the
- 14 contract file.
- The committee shall review and evaluate all submissions and
- 16 other pertinent information, including references and reports,
- 17 and prepare a list of qualified persons to provide these
- 18 services. Persons included on the list of qualified persons may
- 19 amend their statements of qualifications as necessary or
- 20 appropriate. Persons shall immediately inform the head of the
- 21 purchasing agency of any change in information furnished which

- would disqualify the person from being considered for a contract
 award.
- 3 (d) Whenever during the course of the fiscal year the
- 4 agency needs a particular professional service, the head of the
- 5 purchasing agency shall designate a [screening] selection
- 6 committee to evaluate the statements of qualification and
- 7 performance data of those persons on the list prepared pursuant
- 8 to subsection (c) along with any other pertinent information,
- 9 including references and reports. The [screening] selection
- _10 committee shall be comprised of a minimum of three [employees-of
- 11 the purchasing agency | persons with sufficient education,
- 12 training, and licenses or credentials in the area of the
- 13 services required. [If the purchasing agency and using agency
- 14 are different, the committee shall include at least one
- 15 qualified employee from the using agency. When the committee
- 16 includes an employee from a using agency, the employee shall be
- 17 appointed by the head of the using agency. If qualified
- 18 employees are not available from these agencies, the officers
- 19 may designate employees of other governmental bodies.] In
- 20 designating the members of the selection committee, the head of
- 21 the purchasing agency shall ensure the impartiality and

independence of committee members. The names of the members of

1	<u>a selecti</u>	on committee established under this section shall be
2	placed in	the contract file.
3	<u>(e)</u>	The [primary] selection criteria employed [by the
4	screening	-committee] in descending order of importance shall
5	[include	but not] be [limited to]:
6	(1)	Experience and professional qualifications [of the
7		staff to be assigned] relevant to the project[+] type:
8	(2)	Past performance on projects of similar scope for
9		<pre>public agencies or private industry[; and], including</pre>
10		corrective actions and other responses to notices of
11		<u>deficiencies;</u>
12	(3)	Capacity to accomplish the work in the required
13		time[-] <u>; and</u>
14	(4)	Any additional criteria determined in writing by the
15		selection committee to be relevant to the purchasing
16		agency's needs or necessary and appropriate to ensure
17		full, open, and fair competition for professional
18		services contracts.
19	<u>(f)</u>	The [screening] selection committee shall evaluate the

submissions of persons on the list prepared pursuant to

available to the agency, against the selection criteria.

subsection (c) and any other pertinent information which may be

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1 committee may conduct confidential discussions with any person 2 who is included on the list prepared pursuant to subsection (c) 3 regarding the services which are required and the services they 4 are able to provide. In conducting discussions, there shall be 5 no disclosure of any information derived from [proposals 6 submitted by competing offerors. The committee shall provide 7 the head of the purchasing agency with the names of a minimum of 8 three persons who the committee concludes are the most qualified 9 to provide the services required, with a summary of each of 10 their qualifications.] the competing professional service 11 offerors. 12 (q) The selection committee shall rank a minimum of three 13 persons based on the selection criteria and send the ranking to 14 the head of the purchasing agency. The contract file shall 15 contain a copy of [the criteria established for the selection 16 and] the [committee's] summary of qualifications for the ranking 17 of each of the persons provided to the head of the purchasing 18 agency [by the committee.] for contract negotiations. If more 19 than one person holds the same qualifications under this 20 section, the selection committee shall rank the persons in a 21 manner that ensures equal distribution of contracts among the

persons holding the same qualifications.

1	[(c) The head of the purchasing agency shall evaluate the
2	summary of qualifications for each of the persons provided by
3	the screening committee and may conduct additional discussions
4	with any of them. The head of the purchasing agency shall then
5	rank the persons based on the selection criteria.]
6	(h) The head of the purchasing agency or designee shall
7	negotiate a contract with the first ranked person, including a
8	rate of compensation which is fair and reasonable, established
9	in writing, and based upon the estimated value, scope,
10	complexity, and nature of the services to be rendered. If a
11	satisfactory contract cannot be negotiated with the first ranked
12	person, negotiations with that person shall be formally
13	terminated and negotiations with the second ranked person on the
14	list shall commence. The contract file shall include
15	documentation from the head of the purchasing agency, or
16	designee, to support selection of other than the first ranked or
17	next ranked person. Failing accord with the second ranked
18	person, negotiations with the next ranked person on the list
19	shall commence. If a contract at a fair and reasonable price
20	cannot be negotiated, the [screening] selection committee may be
21	asked to submit a minimum of three additional persons for the
	head of the purchasing agency to [rank, and] resume negotiations

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1 in the same manner provided in this sub	bsection. Negotiations
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- 2 shall be conducted confidentially.
- 3 [\(\frac{(i)}{}\)] (i) Contracts awarded under this section for \$5,000
- 4 or more shall be posted electronically within seven days of the
- 5 contract award by the chief procurement officer or designee and
- 6 shall remain posted for at least one year. Information to be
- 7 posted shall include [+], but not be limited to:
- 8 (1) The names of the [top-five] persons submitted under
- 9 subsection [(d), or, if the list submitted under
- subsection (d) is less than five, all of the persons
 - 11 submitted] (q);
 - 12 (2) The name of the person or organization receiving the
 - award;
 - 14 (3) The dollar amount of the contract;
 - 15 (4) The name of the head of the purchasing agency or

 - 17 (5) Any relationship of the principals to the official
 - 18 making the award.
 - 19 $\left[\frac{g}{g}\right]$ (i) Contracts for professional services of less than
 - 20 [\$25,000] the limits in section 103D-305, may be negotiated by
 - 21 the head of the purchasing agency, or designee, with at least
 - any two persons [who appear] on the list of qualified persons

- 1 established pursuant to subsection (c). Negotiations shall be
- 2 conducted in the manner set forth in subsection [(e), but
- 3 without establishing any order of preference.] (h), with ranking
- 4 based on the selection criteria of subsection (e) as determined
- 5 by the head of the agency.
- 6 (k) In cases of awards made under this section,
- 7 nonselected professional service providers may submit a written
- 8 request for debriefing to the chief procurement officer or
- 9 designee within three working days after the posting of the
- 10 award of the contract. Thereafter, the head of the purchasing
- 11 agency shall provide the requester a prompt debriefing in
- 12 accordance with rules adopted by the policy board. Any protest
- 13 by the requester pursuant to section 103D-701 following
- 14 debriefing shall be filed in writing with the chief procurement
- 15 officer or designee within five working days after the date that
- the debriefing is completed."
- 17 SECTION 6. Section 103D-310, Hawaii Revised Statutes, is
- 18 amended to read as follows:
- 19 "§103D-310 Responsibility of offerors. (a) Unless the
- 20 policy board, by rules, specifies otherwise, before submitting
- 21 an offer, a prospective offeror, not less than ten calendar days

prior to the day designated for opening offers, shall give

- 1 written notice of the intention to submit an offer to the
- 2 procurement officer responsible for that particular procurement.
- 3 (b) Whether or not an intention to bid is required, the
- 4 procurement officer shall determine whether the prospective
- 5 offeror has the financial ability, resources, skills,
- 6 capability, and business integrity necessary to perform the
- 7 work. For this purpose, the officer, in the officer's
- 8 discretion, may require any prospective offeror to submit
- 9 answers, under oath, to questions contained in a standard form
- 10 of questionnaire to be prepared by the policy board. Whenever
- it appears from answers to the questionnaire or otherwise, that
- 12 the prospective offeror is not fully qualified and able to
- 13 perform the intended work, a written determination of
- 14 nonresponsibility of an offeror shall be made by the head of the
- 15 purchasing agency, in accordance with rules adopted by the
- 16 policy board. The unreasonable failure of an offeror to
- 17 promptly supply information in connection with an inquiry with
- 18 respect to responsibility may be grounds for a determination of
- 19 nonresponsibility with respect to such offeror. The decision of
- 20 the head of the purchasing agency shall be final unless the
- 21 offeror applies for administrative review pursuant to section 103D-709.

1	(c) All offerors, upon award of contract, shall comply
2	with all laws governing entities doing business in the State,
3	including chapters 237, 383, 386, 392, and 393, and shall:
4	(1) Be incorporated or organized under the laws of the
5	State; or
6	(2) Be registered to do business in the State as a
7	separate branch or division that is capable of fully
8	performing under the contract.
9	Offerors shall produce documents to the procuring officer to
1.0	demonstrate compliance with this subsection. Any offeror making
11	a false affirmation or certification under this subsection shall
12	be suspended from further offerings or awards pursuant to
13	section 103D-702.
14	[(c)] (d) Information furnished by an offeror pursuant to
15	this section shall not be disclosed to any person except to law
16	enforcement agencies as provided by chapter 92F."
17	SECTION 7. Section 103D-701, Hawaii Revised Statutes, is
18	amended by amending subsection (a) to read as follows:
19	"(a) Any actual or prospective bidder, offeror, or
20	contractor who is aggrieved in connection with the solicitation
21	or award of a contract may protest to the chief procurement
	Officer or a designee as specified in the solicitation. [A]

1	Except as provided in sections 103D-303 and 103D-304, a protest
2	shall be submitted in writing within five working days after the
3	aggrieved person knows or should have known of the facts giving
4	rise thereto; provided that a protest of an award or proposed
5	award shall in any event be submitted in writing within five
6	working days after the posting of award of the contract [either]
7	under section 103D-302 or 103D-303, if no request for debriefing
8	has been made, as applicable; provided further that no protest
9	based upon the content of the solicitation shall be considered
10	unless it is submitted in writing prior to the date set for the
11	receipt of offers."
12	SECTION 8. Section 103D-1007, Hawaii Revised Statutes, is
13	repealed.
14	["\$103D-1007 Preference to bidders on state agency
15	contracts. (a) The requirements in this section are in
16	addition to any other applicable requirements provided in this
17	chapter.
18	(b) The preference in this section may not be used in
19	combination with any other preference otherwise available to a
20	bidder under state or federal law.
21	(c) In any section 103D 302 or 103D 303 contract for a

public works project, a state agency shall award the contract to

1	an offeror who has filed all state tax returns due to the State
2	and paid all amounts owing on such returns for two successive
3	years prior to submitting the offer; provided that the amount of
4	that offer is not more than seven per cent higher than the
5	amount offered by any competing contractor who has not filed or
6	paid-all applicable state taxes, and the amount of the offer by
7	the state tax paying offeror is \$5,000,000 or less.
8	(d) In any section 103D 302 or 103D 303 contract for a
9	public works project, a state agency shall award the contract to
10	an offeror who has filed all state tax returns due to the State
11	and paid all amounts owing on such returns for four successive
12	years prior to submitting the offer; provided that the amount of
13	that offer is not more than seven per cent higher than the
14	amount offered by any competing contractor who has not filed or
15	paid all applicable state taxes, and the amount of the offer by
16	the state tax paying offeror is more than \$5,000,000.
17	(e) If two or more contractors who have paid state and
18	county taxes or were required to submit a filing regarding state
19	and county taxes are bidding on a public works contract, and
20	those contractors meet the criteria outlined in subsection (c)
21	or (d), the state agency shall award the contract to the

. 1	(f) If any federal statute or regulation precludes the
2	granting of federal assistance or reduces the amount of that
3	assistance for a particular public works project because of
4	preference awarded by this section, this section shall not apply
5	insofar as its application would preclude or reduce federal
6	assistance for that work."]
7	SECTION 9. If any provision of this Act, or the
8	application thereof to any person or circumstance is held
9	invalid, the invalidity does not affect other provisions or
10	applications of this Act which can be given effect without the
11	invalid provision or application, and to that extent the
12	provisions of this Act are severable.
13	SECTION 10. Statutory material to be repealed is bracketed
14	and stricken. New statutory material is underscored.
15	SECTION 11. This Act shall take effect on July 1, 2003

Report Title:

Procurement; Offeror Compliance With State Employment Laws; Pre-bid Conference; Procurement Institute; Professional Service Providers

Description:

Requires that all offerors awarded state contracts be incorporated or organized under the laws of the State or create an in-state division and comply with all applicable state employment laws. Requires a pre-bid conference to be held at least fifteen days prior to submission of bids pursuant to section 103D-302 for construction or design-build projects with a total contract value of \$500,000 or greater, or proposals pursuant to section 103D-303 for projects over \$100,000. Establishes a Procurement Institute to improve and enhance the efficiency, integrity and transparency of the State procurement process. Provides that design professional services may only be procured under section 103D-304, Hawaii Revised Statutes, or pursuant to emergency procurement procedures. Requires that an independent selection committee rank the applying professional service providers according to relevant criteria. Requires the awarding procurement official to negotiate award of the contract with the providers in the rank order set by the committee. Requires equal distribution of contract awards where providers hold the same qualifications or ranking. Repeals state taxpayer procurement preference. (CD1)